

Contents

1. Document 1.....	2
2. Document 2.....	3
3. Document 3.....	7
4. Document 4.....	8

1. Document 1

Excerpt from Consultation Response from The Shooters' Rights Association to Proposals for Air Weapons Licensing in Scotland sent March 2013.

10—Hand-in Period

10.1 We can't imagine how any legitimate government can conceive of a requirement for its citizens to hand in to the police anything that they already lawfully own, never having had to justify owning it to anyone but themselves. And what next? Mobile phones? Brown shoes?

The concept of 'good reason' doesn't exist in the case of shotguns, which is the certification model that the Scottish Government purports to be following when considering 'licensing' air weapons, yet the idea that one needs a 'good reason' to keep one's already lawfully owned property pops up in one paragraph after another, undiscussed, unexplained; it's just there, as though we should all fall for it being part of this debate.

The only good reason necessary for owning something is that we already have it. Our property is precisely that: our property. No government can take it away from us without due process – see the Human Rights Act – so paragraph 57 is simply nonsense. Licences cannot be retrospective, so that which is already owned comes with 'grandfather' rights.

10.2 Paragraph 58 – the police have routinely been the worst possible suggestion for handing unwanted anything to. The gun trade has relieved the unregistered pool of more firearms since 1920 than the police have, by a considerable margin. People who wind up owning a firearm by default generally expect it to be worth something, so one of the main non-sentimental reasons for not disposing of it is not knowing how to realize its value.

That value may be limited; most 'off-ticket' firearms, in our experience, are offered to us for less than they'd be worth at auction. Either way, they have an asset value to the family, or the deceased's estate, that should be realized. If the opportunity to make that money is not available, most families would hold on to it in the hope of a better future regime than part with it for nothing.

10.3 Longer term (paragraph 59) it doesn't matter when the 'illegal' air weapon comes to light, because it hasn't ever needed a certificate, or licence, until the transaction that brings it into the open. At that point, the best chance of it becoming registered is that the executor gets a free licence, along the lines of section 7 permits for firearms and shotguns, so that he can realize its value for the estate. Without such a provision, they simply sleep on through the next generation, as do at least four million real guns in private homes around the United Kingdom.

11—Compensation

11.1 Paragraph 61. It's odd that the Scottish Government hasn't understood the Human Rights Act. There can be no confiscation without compensation except by due process of law, so any attempt to make air weapon licensing retrospective without some mechanism for compensation will not be legal. In other words, it would have to be accompanied by a

buy-in scheme for the unwanted junk that the Scottish Government has convinced itself is a threat to public safety.

The potential cost of this bears scrutiny. There are allegedly 500,000 air weapons at large somewhere in Scotland, and the consultation paper maintains that their average value is £119.00 (paragraph 69). A buy-in scheme should therefore budget for spending £59.5 million in compensation alone. That figure can probably be doubled to estimate an overall cost including overheads. This is a tidy sum to spend to no effect on public safety.

We suspect that a buy-in scheme in Scotland will empty English and Welsh junk shops, attics and drawers of worthless rubbish, if the price is right.

2. Document 2

Respondent Information Form as part of a Consultation Response to Proposals for Air Weapons Licensing in Scotland sent March 2013.



ANNEX C: RESPONDENT INFORMATION FORM: PROPOSALS FOR LICENSING AIR WEAPONS IN SCOTLAND

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text" value="[redacted]"/>		
Postcode: <input type="text" value="[redacted]"/>	Phone	Email <input type="text" value="[redacted]"/>

3. Permissions - I am responding as...

Individual / **Group/Organisation**
Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

ANNEX D: RESPONSE FORM: SUMMARY OF QUESTIONS

PROPOSALS FOR LICENSING AIR WEAPONS IN SCOTLAND

Question 1: Do you agree with the proposed types of weapons to be covered by the new regime?

Comments No

Question 2: Should any other weapons be covered?

Comments No

Question 3: Is there any type of air weapon ammunition which should be covered?

Comments No

Question 4: Are there other forms of air weapon use which should be considered as “legitimate”?

Comments Plinking

Question 5: Do you agree that greater restrictions should be placed on where air weapon owners can shoot?

Comments No

Question 6: Do you agree with these proposals for the application process?

Comments No

Question 7: Do you think there are other issues we should consider around the application process?

Comments It should be made lawful, and comply with ECHR, natural justice etc

Question 8: Do you agree that there should be a lower age limit of 18 for those seeking an air weapon certificate, and that use by those younger than 18 should be appropriately supervised by a licensed adult?

CommentsNo

Question 9: Do you agree that a fee should be charged for each air weapons application, whether successful or not?

CommentsNo

Question 10: Do you have a view on an appropriate fee to be charged for new or renewed applications?

CommentsFree

Question 11: Do you agree with the proposed levels of checks on applicants for a visitor's permit?

CommentsNo

Question 12: Do you agree with the proposal to adopt a system of time-limited visitor permits and do you agree with the proposed duration of such permits?

CommentsNo

Question 13: Do you agree that a separate, longer term permit should be available to competition shooters and other regular visitors?

CommentsIt appears that you have already decided upon this.

Question 14: Do you agree that there should be an appropriate hand in period for currently held weapons, in advance of the new legislation taking effect?

CommentsCompensation has yet to be determined, plus there are grandfather rights etc

Question 15: Do you agree that it should be a matter for the police and prosecution services to take a view on air weapons handed in at a later date?

Comments They will remain lawful if the owner previously possessed them

Question 16: Do you agree that it should be open to the police to issue a permit to allow the person to deal with "forgotten" air weapons or, in appropriate cases, to apply for an air weapons certificate?

Comments Unlawful for police to be involved in this!

Question 17: Do you agree that penalties should be set at the same level as for shotgun offences?

Comments No

Question 18: How else might the message be spread?

Comments

Please send any responses, along with a completed Respondent Information Form, to either:

AirWeaponLicensing@Scotland.gsi.gov.uk

or

Police Powers Unit
Safer Communities Directorate
Scottish Government
1WR, St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

3. Document 3

Excerpt from Consultation Response to Proposals for Air Weapons Licensing in Scotland sent 12 March 2013.

[redacted]

12th March 2013

Scottish Executive Proposal Response

This is my response to severe concerns raised by proposals in the Scottish Airgun Licensing Bill, drafted by the Scottish Parliament. The Scottish Parliament came into being after approximately 300 years of being inactive in Edinburgh. Current statute law states that the Scottish Parliament MUST comply with the four following constitutional statutes. These are:

- The Declaration of Arbroath 1320
- Claim of Right 1689 (or 1688, dependent upon whether we use the Julian or Gregorian calendar years)
- The European Convention of Human Rights
- Scotland Act 2000

Grandfather Rights

Existing owners effectively have grandfather rights to keep and use their property, with no need for certificates. This is because the guns were once lawful, and cannot simply be made unlawful by refusing to issue a licence or a certificate. Protected by Claim of Right, no due process of law, and Article 1 Protocol 1

The Number of Guns Affected by proposed legislation

Surveys show that only around 10% of guns in UK are registered. Many simply do not need to be registered, as no certificate is required to hold them for a "lawful purpose", and grandfather rights apply. In Britain, it is traditional to register guns, and then ban them. None of the recent gun bans have been compatible with ECHR or other laws.

The big question is this. Why should shooters register guns, in order that they should later be unlawfully banned, without receiving any compensation?

4. Document 4

Email exchange from Scottish Parliament to Scottish Government containing additional evidence from the Institute of Licensing following an evidence Session with the Local Government and Regeneration Committee on the Air Weapons and Licensing Bill sent in January 2015.

From: [redacted]@scottish.parliament.uk
Sent: Friday, January 23, 2015 12:23 PM
To: [redacted]@scotland.gsi.gov.uk
Cc: [redacted]
Subject: RE: Supplementary Evidence from the Institute of Licensing

[redacted]

Thanks for this. Making progress towards the conclusion of stage 1.

[redacted]

From: [redacted]@scotland.gsi.gov.uk
Sent: 23 January 2015 10:45
To: [redacted]
Cc: [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk
Subject: RE: Supplementary Evidence from the Institute of Licensing

Dear [redacted]

Thank you for forwarding the submission prepared by [redacted] on behalf of the Institute of Licensing. We have studied the responses to your call for evidence and continue to follow the evidence gathering sessions held by the Local Government and Regeneration Committee with considerable interest. While evidence has, of course, been provided in respect of the provisions of the Bill, much has also been said about a wide range of issues that are not included within the Bill. In respect of alcohol licensing, we have been clear that the proposals in the Bill are intended to improve the existing system but that they do not comprise a radical overhaul.

The alcohol licensing regime is particularly complex and the range of stakeholders is wide. It is therefore important that any changes are carefully considered in the round to avoid unintended adverse consequences. We believe that the proposals relating to provisional 'site only' applications and surrendered licences have the potential to undermine facets of the existing regime and would not be widely supported by other licensing stakeholders. Licensing Boards need to be in possession of full and accurate information to inform their determination of overprovision and make decisions about individual licences

However, we continue to consider the concerns raised in relation to the existing law on transfers of alcohol premises licences. We note that in the evidence gathering session on 19th November, [redacted] on behalf of the local authority licensing clerks in the SOLAR Licensing Subcommittee, while sharing many of the concerns about the existing legislation's approach to transfers, flagged that clerks were likely to have different views on how to resolve them.

It remains our intention that the alcohol licensing regime operates effectively to meet the aspirations of the various stakeholders and legitimate interests.

Kind regards

[redacted]

Air Weapons and Licensing (Scotland) Bill Team

From: [redacted]@scottish.parliament.uk

Sent: 05 January 2015 08:49

To: [redacted]

Cc: [redacted]@scottish.parliament.uk; [redacted]@scottish.parliament.uk

Subject: FW: Supplementary Evidence from the Institute of Licensing

[redacted]

Here is the supplementary response we were expecting from the Institute of Licensing. It would be helpful to have the views of the SG on these suggestions, would it be possible to have a response within 2 weeks. Sorry I haven't copied this wider to your colleagues as my brain is slow to wake up today!

Separately I have received communication from Finance colleagues suggesting a delay in them taking evidence and reporting to us. We will be considering the effect of that internally later this week and we will be in touch with any changes to dates for evidence, or indeed other dates which might be in jeopardy.

Have a good new year, you will certainly be busy!

Regards

[redacted]

From: [redacted]@TLTsolicitors.com

Sent: 22 December 2014 09:31

To: Air Weapons and Licensing Bill

Cc: [redacted] Stewart K (Kevin), MSP

Subject: Supplementary Evidence from the Institute of Licensing

Dear Sirs

I refer to my attendance at the evidence session on 10 December 2014 in connection with the Air Weapons and Licensing (Scotland) Bill, on behalf of the Institute of Licensing. The Committee will recall that I was asked to present further written evidence in connection with the three technical areas I sought to discuss; namely:

The Licensing (Scotland) Act 2005 ("the 2005 Act")

(1) Transfers of Licences

(2) The option to have a "site only" provisional licence

(3) The status of a surrendered licence

(1) Transfers of Licences

The provisions for transfers of licences are found in s.33 and s.34 of the 2005 Act. The provisions do not adequately deal with the reality of licensing practice and are in dire need of revision. As I said at the evidence session, if there was one aspect of the 2005 Act which every clerk and private practice solicitor and licensing practitioner would wish to see fixed it is this. The difficulties caused by the drafting in s.33 and s.34 are as follows:

- **The Act does not deal with dissolution of companies.** As the Act is silent on this matter, the position of a licence held by a dissolved company is far from acceptable. In some areas this can involve having to seek a restoration of the company to the company register which requires a formal process in the sheriff court which can take many months and thus negate the business which may be trying to carry on at the premises. It may well be the case that company "A" holds the licence but company "B" is trading the venue. In such circumstances company B or the individual is left without a livelihood. A licence held by a dissolved company cannot, on the face of it, be transferred at all. Some licensing boards are willing to treat the licence as bona vacantia but this requires dealing with the QLTR who demand a significant payment to consent to allow the licence to be transferred. The Act should be amended to recognise dissolution, and provide a mechanism to deal with it such as allowing a person who has a right to occupy the premises transfer the licence absent any letter of consent.
- **The Act bears no relation to Scots property law or conveyancing:** the purchase and sale or leasing of licensed premises is firmly embedded in Scots property law. The Act does not reflect common practice such as the completion of sales taking place dependent on the grant of a transfer of a licence. This can cause chaos when considering large corporate or commercial deals involving a large number of premises where transfer processing times vary across Scotland and it is impossible to agree on one "date" for the sale to complete, the "hive down" to occur, or whatever corporate/commercial transaction is being pursued. These difficulties are manifestly worse when the deal relates to properties in England as well as Scotland, such as a company buying pubs on both sides of the border. In many cases management companies or vehicles can be used and they end up being licence holders for a long period of time even though they do not operate the premises; this exposes them to liability and can jeopardise the commercial deal as a whole.
- **The Act does not provide for an interim or deemed grant:** much of the issues over conveyancing could be fixed if the Act could allow a transfer to be "deemed granted" upon lodgement, pending final decision. This used to be the case under the Licensing (Scotland) Act 1976 where there was a two-stage "temporary" and "permanent" transfer; allowing the temporary transfer

to take effect immediately whilst the permanent was considered. This is also the case in the English Licensing Act 2003 which provides for a transfer to take effect on lodgement of the application (s.43, Licensing Act 2003)

- **The Act is overly prescriptive in whom can apply:** the Act lays down certain circumstances where only certain parties can make an application. This includes a simple case of where the "business" is to transfer (s.34(3)(d)). However, if the premises is not trading for whatever reason, is there in fact a "business" to transfer? Some licensing boards refuse to accept transfers where the business is not a "going concern". This is overly prescriptive and the Act does not explain what is meant by the "business" transferring. The answer to this is to allow ANY PERSON to make the application provided they can demonstrate they have a right to occupy the premises. Again we would draw your attention to the provisions of the English licensing system and sections 42 and 43 of the 2003 Act.
- **The 28 day deadline for lodgement is overly prescriptive:** the Act imposes a 28 day deadline for the lodgement of transfers under certain circumstances ie when the licence holder dies, becomes mentally incapable or declared insolvent. This time period does not adequately reflect the reality of the timing particularly in relation to insolvencies. It is common for an insolvency practitioner to be appointed sometime well after the initial declaration of insolvency. The 28 days is already running at this point before the insolvency practitioner is even aware of it. 28 days might also be deemed to be too short notice for a family member dealing with a death or a person declared incapable. If the 28 days passes without an application being lodged, the licence "ceases to have effect" (see below re surrender). This quite often means a trading business and the jobs and livelihoods that the business represents is closed down because the licence is "lost".
- **The Act does not deal with certain types of insolvency:** as mentioned above, the Act requires a transfer to be lodged within 28 days of the licence holder being declared insolvent. The only person who can apply for the licence is the appointed insolvency practitioner. But the Act does not cover every single type of insolvency.
- **The Act does not make it clear who is liable:** who is liable for licensing offences where a transfer is pending? The Act does not deal with this. The outgoing owner may still be on the licence and therefore liable; yet he may no longer be involved in the premises. It is very common because of the issues noted above for a conveyancing transaction to settle meaning party A has no legal involvement in a premises at all; yet because the transfer of the licence to party B has not been approved, party A could still be liable for criminal offences, be cited to hearings and so on.

(2) Provisional "Site Only" Applications

The 2005 Act does not allow a process which I referred to as a "site only" provisional licence. Provisional licences are sought where premises are yet to be built or under construction. Provisional licences must be accompanied by the same level of detail as full licences. This causes difficulties because having to lodge layout plans for a premises which may not even be built is not easy. It means that applicants are lodging fictitious plans just to get the application in the system. Applicants and developers need commercial certainty of knowing a licence will be granted before a

multi-million pound investment crystallises and a premises is built. You cannot have a 5 story hotel, for example, being built without knowing the licence is secured. Applications therefore need to be lodged very early in the process. It is not easy for developers and applicants to secure funding from lenders or capital venture funds and so on unless the commercial certainty of the licence is secured. Yet the Act requires the same level of detail for a provisional licence as it does for a full licence.

The Institute of Licensing therefore suggests the Parliament should re-introduce the old "site only" provisional licence route. Under s.26(2) of the Licensing (Scotland) Act 1976 it was perfectly competent to have a new licence application lodged but without the full detail of layout. Planning would not be jeopardised because planning permission needs to be in place even where a provisional licence is lodged. A certificate from the planners must be lodged with any new licence application. The use of "site only" applications worked for 30 years under the 1976 Act without falling into disrepute. The licensing board would still see the general location of the premises, they would still see the operating plan detailing matters such as trading hours, activities, description of the premises, and so on. In our submission the "site only" provisional licence would be the exact same existing 2005 Act process but without having to lodge a detailed layout plan.

(3) Surrendered Licences

Section 28 of the 2005 Act says that a licence which has been surrendered "ceases to have effect". But that Act does not state what that means. Is it irretrievably gone, or is it in the ether, capable of being brought back to life? Under the 1976 Act the licences could be brought back to life by way of a transfer application. It would be useful to have the 2005 Act allow this to occur. Licences can be surrendered out of spite. There are numerous examples of this across Scotland; where in a landlord/tenant relationship the tenant holds the licence and surrenders the licence to spite the landlord following a fall-out over unpaid rent or any other dispute they may be having. This leaves the landlord with a public house or other type of premises with no licence and the only way back is to apply for a new one. But that is no mean feat as grandfather rights would no longer apply meaning the premises would be subject to modern building regulations and in some cases might not be capable of getting a licence back due to the exorbitant cost of works. Take a Scottish castle or large country house which is licensed. If that licence were surrendered it may be very difficult for that premises to meet current regulations and therefore no new licence could be granted. In addition to this, the premises may be situated in an overprovision zone meaning they are faced with a rebuttable presumption against getting the licence back, and just because the premises held a licence before does not mean a new one will be granted. And all this because the licence was surrendered out of spite.

Under the 1976 Act it was accepted that a surrendered licence could be re-activated via a transfer: see *Tong v Glasgow District Licensing Board* 1992 GWD 19-1125 Sh Ct. That is what the Institute would prefer to see occur under the 2005 Act.

In Summary

In respect of all three of these technical issues, the Institute is aware that the Law Society of Scotland Licensing Sub-committee has offered to draft provisions and submit these drafts to Parliament for consideration. The Sub-committee is a body representative of both local authority clerks and private practice solicitors. The Institute strongly suggests that Parliament invite the Sub-committee to provide the proposed drafting to cure the various defects which are noted above. The secretary for the Sub-committee is Alan McCreadie who can be reached at AlanMcCreadie@lawscot.org.uk.

Can I offer my thanks again to the Local Government and Regeneration Committee for their willingness to allow me to raise these concerns on behalf of the Institute, and licensing practitioners generally. If further evidence is required either by way of written submission or in person at the Parliament I will be happy to make myself available.

Regards

[redacted]

[redacted] TLT LLP

[redacted]

www.TLTsolicitors.com